IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.50 OF 2005
WITH
CIVIL APPLICATION NO.91 OF 2005

Smt.Rupali Krishnant Bacche (Patil)]
Age about 40 years,]
Occ: Housewife, Indian Inhabitant]
of Kolhapur, Residing at Village]
Sawarde, Taluka Panhala,]
Dist. Kolhapur]..Appellant

Vs.

1. Smt.Shubhangi Krishna Patil]
Aged about 45 years]
Occ: Service,]
Indian Inhabitant of Mumbai]
Residing at Flat at Rainbow]
Apt.2nd floor, I.C.Colony,]
Borivali (W) Mumbai-400092]
2. The Headmistress,]
Himalaya High School]
S.V.Road, Borivali (West)]

Mumbai-400092]..Respondents

Shri.J.S.Kini counsel for the Appellant

Shri.B.G.Tangsali with Mrs.S.V.Deshmukh

and Mrs.P.V.Badadare counsel for Respondent

CORAM : DR.S.RADHAKRISHNAN AND SMT.V.K.TAHILRAMANI,JJ.

DATE : DECEMBER 20, 2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. This Family Court Appeal arises from the judgment and order dated 8th October, 2004 passed by the learned Principal Judge of the Family Court, Mumbai. By the said judgment and order, the Petition No.B-83 of 2002 which was filed by the present appellant came to be dismissed.

2. As per the appellant, she was married to Shri.Krishnant Bacche (Patil) on 7.7.1978 and she begot a daughter by name Megharani from the said wed-lock. Krishnant Patil moved from his native village Sawarde and started working as a school

teacher in Mumbai. Krishnant Patil died on 19.7.2002 at Mumbai. Thereafter, appellant came to know that the respondent no.1-Shubhangi Krishna Patil claiming to be the legally wedded wife of Krishna Patil, had submitted an application to respondent no.2-The Headmistress, Himalaya High School, S.V.Road, Borivali for receiving the legal dues and pensionary benefits in respect of service rendered by Krishna Patil. The appellant, therefore, approached the Family Court and sought the relief of declaration that she is the legally wedded wife of Krishna Patil and respondent no.1 Smt.Shubhangi Krishna Patil was not the legally wedded wife of Krishna Patil.

3. The respondent no.1 claimed that she was married to Krishna Patil on 13.12.1982 and the marriage was registered under Special Marriage Act, 1954. After the marriage, she had visited village Sawarde along with Krishna Patil to meet his family members. She further claimed that she used to visit village Sawarde during the vacation and at no point of time, she ever saw the appellant either residing with her in laws or anywhere in the village as the first wife of Krishna Patil. Respondent no.1 further claimed that the appellant put up a false claim and the

documents submitted by her, could not prove that she was the legally wedded wife of Krishna Patil.

4. Both the parties submitted their evidence documentary as well as oral. The appellant examined herself and so did respondent no.1. The appellant's case was mainly based on certified extract of the marriage register at Panhala District Kolhapur (Exhibit-17). This document was titled as "Appendix 1 Form 'D' Marriage Registration Form" which was issued on 27.7.2002. The Family Court did not accept this document as evidence in support of the appellant's case. In addition, the Ration Card at Exhibit-22 has also been discarded. The Certificate at Exhibit-18 issued by Vidya Mandir Sawarde Turf Satve, Taluka Panhala, District Kolhapur certifying the date of birth of Megharani as 6th October, 1990, the photos at Exhibit-19 have also been discarded. Whereas, the documentary evidence submitted by respondent no.1 viz. certified true copy of the certificate of marriage and photographs of respondent no.1 with Krishna Patil has been accepted as sufficient proof to hold that respondent no.1 is the legally wedded wife of late Krishna Patil.

5. In the impugned order, the learned Judge of the Family Court has herself noted that the document at Exhibit-17 showed the date of marriage registration as 7.6.1998 and the names of the bride and bridegroom along with addresses and age etc. It also gave details of the parents of both parties. The learned Judge discarded this document only on the ground that the appellant did not produce the certified true copy of the marriage registration. In our considered opinion, this view of the Family Court fails to appreciate the attending circumstances. The appellant had stated that she was married to Krishna Patil on 7.6.1978 at village Sawarde as per Hindu rites and she was staying with her in laws while her husband Krishna Patil used to visit village of and on. She begot a daughter by name Megharani on 6.10.1990. The appellant is an illiterate woman and was not equipped sufficiently to discharge the burden that she was the legally wedded wife of Krishna Patil. On the other hand, the respondent no.1 is an educated person working as a school teacher at Mumbai and armed with registration of a marriage under Special Marriage Act, 1954. We have also noted that an application at Exhibit-24 was filed by the appellant seeking leave of the Court to examine five

other witnesses who are either her relatives or her in laws. This application came to be rejected on the sole ground that the evidence of the witnesses so examined, would not be a corroborative evidence and it would only be repetitive. The learned Judge of the Family Court further took note of the fact that these five witnesses attended the marriage of the appellant with Krishna Patil. This approach of the Family Court is grossly erroneous and has resulted in miscarriage of justice. These five witnesses would be relevant witnesses to depose about the factum of the alleged marriage of the appellant with Krishna and it was necessary that they were allowed to be examined. In fact, Krishna's brother was one of these five witnesses. In fact, if the appellant is able to prove the factum of her marriage with Krishna, she would be entitled for the declaration prayed for before the Family Court. The appellant was wrongly denied opportunity to adduce oral evidence in support of her case that she was married to Krishna on 7.6.1978 and she stayed with her in laws at village Sawarde and she begot a daughter from the said wed-lock on 6.10.1990.

6. Along with this appeal, the appellant has filed

civil application for being allowed to produce additional documentary evidence by way of voters' list, birth certificate of her daughter, village records, photographs pertaining to marriage ceremony. In view of the above, in the interest of justice, we allow the said application so as to bring on record the copies of the said documents. Undoubtedly, this document will have to be proved before the Family Court by leading evidence. In our view, it would be in the interest of justice that the appellant is given a fresh opportunity to prove her case that she was married to Krishna Patil on 7.6.1978 and she was his legally wedded wife.

7. In the premises, this appeal succeeds partly. The impugned judgment passed by the learned Principal Judge of the Family Court, is quashed and set aside and Petition NO.B-83 of 2002 is restored to file of the Family Court at Mumbai. It is directed that the appellant shall be allowed to adduce oral evidence as set out in her application at Exhibit-24 and further oral evidence and additional documents placed before us in Civil Application No.91 of 2005 to prove her contention. On remand, the Petition shall be heard and decided afresh as per law and as expeditiously as

possible but in any case before 31st May, 2007. The case shall be heard preferably on day-to-day basis as the appellant is an illiterate lady, her financial condition is very poor and she and the five witnesses have to come from Kolhapur.

8. While deciding the petition on remand, the Family Court will not be influenced by any observations made in the impugned order. The order of interim protection as passed by the Family Court to continue to operate till the petition i.e. Petition No.B-83 of 2002 is decided by the Family Court.

9. Petition and Civil Application are disposed of in above terms.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]